

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



Jason Smathers
MuckRock News
PO Box 55819
Boston, MA 02205

Reply to the attention of:

OCT 25 2013

Re: Freedom of Information Act Request No. 731619

By e-mail: 8533-55286117@requests.muckrock.com

Dear Mr. Smathers:

We are responding to your October 21, 2013, letter to the Occupational Safety and Health Administration (OSHA) under the Freedom of Information Act, 5 U.S.C. 552, requesting a “log of all FOIA requests made in fiscal year 2013.”

Using the Department of Labor’s FOIA tracking system, OSHA has created the attached 100 page FOIA log that we believe is responsive to your request. Please note that certain personal identifying information is redacted pursuant to exemption 6.

Exemption 6 permits the withholding of information contained in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6); *see also* *Painting Industry of Hawaii Market Recovery Fund v. U.S. Dep’t of the Air Force*, 26 F.3d 1479, 1486 (9th Cir. 1994); *Sheet Metal Workers Int’l Ass’n v. U.S. Air Force*, 63 F.3d 994 (10th Cir. 1995); and *Painting and Drywall Work Pres. Fund, Inc. v. U.S. Dep’t of Housing and Urban Dev.*, 936 F.2d 1300 (D.C. Cir. 1991). The Supreme Court has ruled that the term “similar files” encompasses any government record that concerns a particular individual; the term is not limited to records contained in personnel or medical files. *See, e.g., Dep’t of State v. Washington Post*, 456 U.S. 595 (1982). Exemption 6 requires weighing the privacy interest in nondisclosure against the public interest in the release of the records. *See, e.g., Ripskis v. HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984).

For a privacy interest to exist, the information must be such that there is “a substantial probability that a disclosure will cause an interference with personal privacy” and that disclosure could subject the individuals to “unwanted intrusions.” *National Association of Retired Federal Employees v. Horner*, 879 F.2d 873, 878 (D.C. Cir. 1989) (NARFE). The materials in this case contain personal identifying information. We find that the individuals identified in the materials have a privacy interest in this information.

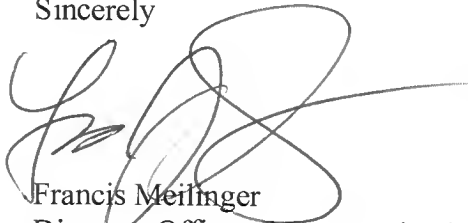
However, the question of whether a privacy interest exists is not our only inquiry. Even if a privacy interest exists in certain information, we must disclose the information if the privacy interest is outweighed by a significant public interest. The test for determining whether a public interest sufficient to justify release of the requested information exists is whether disclosure of the information “sheds light on an agency’s performance of its statutory duties.” *See NARFE*, 879 F.2d at 879. The requestor has the burden of establishing that disclosure would serve the

public interest. *Carter v. U.S. Dep't of Commerce*, 830 F.2d 388, 391 nn.8 & 13 (D.C. Cir. 1987); see also, e.g., *National Archives and Records Administration v. Favish*, 541 U.S. 157, 172 (2004). In *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 776 (1989), the Supreme Court made clear that, for FOIA purposes, "public interest" is limited to the public's right to be informed about the workings of its government. *Id.* at 773. Thus, the test for "public interest" under FOIA is not whether there is a general interest in the information, such as the type of interest that may exist in celebrities, weather events, natural disasters, or high-profile litigation. Rather, "the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *Nat'l Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (citations omitted). In this case, you have not established that the personal information at issue would inform the public in any meaningful way about the workings of the government. We find that personal privacy interests of the individuals mentioned in this case outweighs any public interest and that we must protect this information under exemption 6.

You also requested a fee waiver. However, no fees were incurred in the processing of your request. Consequently, your request for a fee waiver is moot.

You have the right to appeal this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statements or arguments. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal should include a copy of your initial request and a copy of this letter. You may mail you appeal to: Solicitor of Labor, U.S. Department of Labor, Room N-2420, 200 Constitution Avenue, N.W., Washington, D.C. 20210. If mailed, both envelop and letter of appeal should be clearly marked: "Freedom of Information Act Appeal." You also may submit an appeal by email to: foiaappeal@dol.gov.

Sincerely

A handwritten signature in dark ink, appearing to read 'Francis Meilinger', with a long, sweeping horizontal line extending to the right.

Francis Meilinger
Director, Office of Communications
OSHA